



February 20, 2004

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## ENGROSSED SENATE BILL No. 222

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DIGEST OF SB 222 (Updated February 18, 2004 5:32 pm - DI 108)

**Citations Affected:** IC 23-15; IC 24-4.5; IC 28-1; IC 28-7; IC 28-8; IC 28-10; IC 28-11; IC 28-13; IC 28-15; IC 32-17; IC 32-29.

**Synopsis:** Names of banks. Permits the secretary of state to administratively dissolve a business entity whose name contains the term "banc" or "banco" in violation of financial institutions law. (Current law allows the secretary of state to take this action in the case of an entity whose name contains the term "bank".) Permits the use of the word "bank", "banc", or "banco" in the name of a subsidiary of: (1) a bank or trust company; and (2) a bank holding company. Permits the use of the word "bank", "banc", or "banco" in the name of a subsidiary of a savings bank or savings association. Updates references in financial institutions law to conform with federal law. Permits a state chartered financial institution to engage in activities related to a product, a service, or an investment that is available to or offered by national banks domiciled in Indiana. Removes limitations on the amount of public funds that may be deposited in a credit union. (Currently, deposits of public funds are limited to 10% of total credit union assets.) Increases the minimum amount of the bond required for a money transmitter from \$100,000 to \$200,000 and the maximum  
(Continued next page)

**Effective:** January 1, 2004 (retroactive); July 1, 2004.

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### Long

(HOUSE SPONSORS — BARDON, WHETSTONE)

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January 8, 2004, read first time and referred to Committee on Insurance and Financial Institutions.

January 20, 2004, reported favorably — Do Pass.

January 26, 2004, read second time, ordered engrossed. Engrossed.

January 29, 2004, read third time, passed. Yeas 47, nays 0.

#### HOUSE ACTION

February 4, 2004, read first time and referred to Committee on Financial Institutions.

February 19, 2004, amended, reported — Do Pass.

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ES 222—LS 6691/DI 108+



amount from \$200,000 to \$300,000. Increases the insurance coverage required for a money transmitter for criminal or dishonest acts from 50% to 100% of the amount of the money transmitter's security bond or deposit. Provides that state law applies to a state chartered bank, trust company, savings association, savings bank, credit union, corporate fiduciary, or industrial loan and investment company to the same extent it applies to a federally chartered institution of the same type. Establishes administrative procedures governing requests for an exemption from state law due to the preemption of state law as it is applied to federally chartered institutions. Authorizes the director of the department of financial institutions to appoint a person to fill a vacancy on the board of directors of a financial institution under certain circumstances. Makes an investment management or a custody account with a trust company or trust division of a bank with trust powers subject to the uniform act on transfer on death securities. Prohibits a lender from requiring a borrower to obtain hazard insurance in an amount exceeding the replacement value of the improvements on mortgaged property as a condition of receiving or maintaining the mortgage.

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February 20, 2004

Second Regular Session 113th General Assembly (2004)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2003 Regular Session of the General Assembly.

## ENGROSSED SENATE BILL No. 222

A BILL FOR AN ACT to amend the Indiana Code concerning financial institutions.

*Be it enacted by the General Assembly of the State of Indiana:*

1 SECTION 1. IC 23-15-8-3, AS ADDED BY P.L.277-2001,  
2 SECTION 12, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
3 JULY 1, 2004]: Sec. 3. (a) If the department of financial institutions  
4 determines that a business entity has violated IC 28-1-20-4, the  
5 department of financial institutions shall notify the secretary of state of  
6 the violation.

7 (b) The secretary of state shall commence a proceeding under this  
8 section to administratively dissolve a business entity if:

9 (1) the name of the business entity contains the word "bank",  
10 "banc", or "banco"; and

11 (2) the department of financial institutions determines that the  
12 business entity violates IC 28-1-20-4.

13 (c) If the secretary of state commences an administrative dissolution  
14 under subsection (b), the secretary of state shall serve the business  
15 entity with written notice of the determination under subsection (b)(2).  
16 The secretary of state shall, at the same time notice is sent to the  
17 business entity, provide a copy of the notice to the department of

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financial institutions.

(d) If a business entity that receives a notice under subsection (c) does not:

(1) correct the grounds for dissolution; or

(2) demonstrate to the reasonable satisfaction of the department of financial institutions that the grounds for dissolution do not exist;

at any time after sixty (60) days after service of the notice is perfected, the department of financial institutions shall notify the secretary of state in writing of the continuing violation. After receiving the written notice from the department of financial institutions, the secretary of state shall administratively dissolve the business entity by signing a certificate of dissolution that recites the grounds for dissolution and the effective date of the dissolution. The secretary of state shall file the original certificate of dissolution and serve a copy of the certificate of dissolution on the business entity.

(e) A business entity administratively dissolved under this section may carry on only those activities necessary to wind up and liquidate the business entity's affairs.

SECTION 2. IC 24-4.5-1-102, AS AMENDED BY P.L.258-2003, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2004 (RETROACTIVE)]: Sec. 102. Purposes; Rules of Construction—(1) This article shall be liberally construed and applied to promote its underlying purposes and policies.

(2) The underlying purposes and policies of this article are:

(a) to simplify, clarify, and modernize the law governing retail installment sales, consumer credit, small loans, and usury;

(b) to provide rate ceilings to assure an adequate supply of credit to consumers;

(c) to further consumer understanding of the terms of credit transactions and to foster competition among suppliers of consumer credit so that consumers may obtain credit at reasonable cost;

(d) to protect consumer buyers, lessees, and borrowers against unfair practices by some suppliers of consumer credit, having due regard for the interests of legitimate and scrupulous creditors;

(e) to permit and encourage the development of fair and economically sound consumer credit practices;

(f) to conform the regulation of consumer credit transactions to the policies of the Federal Consumer Credit Protection Act; and

(g) to make uniform the law including administrative rules among the various jurisdictions.

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(3) A reference to a requirement imposed by this article includes reference to a related rule of the department adopted pursuant to this article.

(4) A reference to a federal law in IC 24-4.5 is a reference to the law in effect December 31, ~~2002~~ **2003**.

SECTION 3. IC 28-1-11-3.2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 3.2. (a) As used in this section, "rights and privileges" means the power:

(1) to:

~~(1)~~ (A) create;

~~(2)~~ (B) deliver;

~~(3)~~ (C) acquire; or

~~(4)~~ (D) sell;

a product, a service, or an investment that is available to or offered by; **or**

**(2) to engage in other activities authorized for;**

national banks domiciled in Indiana.

(b) A bank that intends to exercise any rights and privileges that are:

(1) granted to national banks; but

(2) not authorized for banks under the Indiana Code (except for this section) or any rule adopted under the Indiana Code;

shall submit a letter to the department describing in detail the requested rights and privileges granted to national banks that the bank intends to exercise. If available, copies of relevant federal law, regulations, and interpretive letters must be attached to the letter submitted by the bank.

(c) The department shall promptly notify the requesting bank of the department's receipt of the letter submitted under subsection (b). Except as provided in subsection (e), the bank may exercise the requested rights and privileges sixty (60) days after the date on which the department receives the letter unless otherwise notified by the department.

(d) The department, through its members, may prohibit the bank from exercising the requested rights and privileges only if the members find that:

(1) national banks domiciled in Indiana do not possess the requested rights and privileges; or

(2) the exercise of the requested rights and privileges by the bank would adversely affect the safety and soundness of the bank.

(e) The sixty (60) day period referred to in subsection (c) may be extended by the department based on a determination that the bank's letter raised issues requiring additional information or additional time for analysis. If the sixty (60) day period is extended under this

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subsection, the bank may exercise the requested rights and privileges only if the bank receives prior written approval from the department. However:

(1) the members must:

(A) approve or deny the requested rights and privileges; or

(B) convene a hearing;

not later than sixty (60) days after the department receives the bank's letter; and

(2) if a hearing is convened, the members must approve or deny the requested rights and privileges not later than sixty (60) days after the hearing is concluded.

(f) The exercise of rights and privileges by a bank in compliance with and in the manner authorized by this section is not a violation of any provision of the Indiana Code or rules adopted under IC 4-22-2.

(g) Whenever, in compliance with this section, a bank exercises rights and privileges granted to national banks domiciled in Indiana, all banks may exercise the same rights and privileges if the department by order determines that the exercise of the rights and privileges by all banks would not adversely affect their safety and soundness.

(h) If the department denies the request of a bank under this section to exercise any rights and privileges that are granted to national banks, the bank may appeal the decision of the department to the circuit court with jurisdiction in the county in which the principal office of the bank is located. In an appeal under this section, the court shall determine the matter de novo.

SECTION 4. IC 28-1-20-4, AS AMENDED BY P.L.258-2003, SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 4. (a) Except as provided in subsections (c), (d), (g), and (k), it is unlawful for any person, firm, limited liability company, or corporation (other than a bank or trust company, a bank holding company, **a subsidiary of a bank or trust company, a subsidiary of a bank holding company, a subsidiary of a savings bank, a subsidiary of a savings association, or a corporate fiduciary organized or reorganized under IC 28 or statutes in effect at the time of organization or reorganization or under the laws of the United States**):

(1) to use the word "bank", "banc", or "banco" as a part of the name or title of the person, firm, or corporation; or

(2) to advertise or represent the person, firm, limited liability company, or corporation to the public:

(A) as a bank or trust company or a corporate fiduciary; or

(B) as affording the services or performing the duties which by law only a bank or trust company or a corporate fiduciary is

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1 entitled to afford and perform.

2 (b) A financial institution organized under the laws of any state or  
3 the United States that establishes a branch office under this title is  
4 authorized to do business at that branch using a name other than the  
5 name of its home office.

6 (c) Notwithstanding the prohibitions of this section, an out-of-state  
7 financial institution with the word "bank" in its legal name may use the  
8 word "bank" if the financial institution is insured by the Federal  
9 Deposit Insurance Corporation or its successor.

10 (d) Notwithstanding subsection (a), a building and loan association  
11 organized under IC 28-4 (before its repeal) may include in its name or  
12 title:

- 13 (1) the words "savings bank"; or  
14 (2) the word "bank" if the name or title also includes either the  
15 words "savings bank" or letters "SB".

16 A building and loan association that includes "savings bank" in its title  
17 under this section does not by that action become a savings bank for  
18 purposes of IC 28-6.1.

19 (e) The name or title of a savings bank governed by IC 28-6.1 must  
20 include the words "savings bank" or the letters "SB".

21 (f) A savings association may include in its name the words  
22 "building and loan association".

23 (g) Notwithstanding subsection (a), a bank holding company (as  
24 defined in 12 U.S.C. 1841) may use the word "bank" or "banks" as a  
25 part of its name. However, this subsection does not permit a bank  
26 holding company to advertise or represent itself to the public as  
27 affording the services or performing the duties that by law a bank or  
28 trust company only is entitled to afford and perform.

29 (h) The department is authorized to investigate the business affairs  
30 of any person, firm, limited liability company, or corporation that uses  
31 "bank", "banc", or "banco" in its title or holds itself out as a bank,  
32 corporate fiduciary, or trust company for the purpose of determining  
33 whether the person, firm, limited liability company, or corporation is  
34 violating any of the provisions of this article, and, for that purpose, the  
35 department and its agents shall have access to any and all of the books,  
36 records, papers, and effects of the person, firm, limited liability  
37 company, or corporation. In making its examination, the department  
38 may examine any person and the partners, officers, members, or agents  
39 of the firm, limited liability company, or corporation under oath,  
40 subpoena witnesses, and require the production of the books, records,  
41 papers, and effects considered necessary. On application of the  
42 department, the circuit or superior court of the county in which the

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1 person, firm, limited liability company, or corporation maintains a  
 2 place of business shall, by proper proceedings, enforce the attendance  
 3 and testimony of witnesses and the production and examination of  
 4 books, papers, records, and effects.

5 (i) The department is authorized to exercise the powers under  
 6 IC 28-11-4 against a person, firm, limited liability company, or  
 7 corporation that improperly holds itself out as a financial institution.

8 (j) A person, firm, limited liability company, or corporation who  
 9 violates this section is subject to a penalty of five hundred dollars  
 10 (\$500) per day for each and every day during which the violation  
 11 continues. The penalty imposed shall be recovered in the name of the  
 12 state on relation of the department and, when recovered, shall be paid  
 13 into the financial institutions fund established by IC 28-11-2-9.

14 (k) The word "bank", "banc", or "banco" may not be included in the  
 15 name of a corporate fiduciary.

16 (l) A person, firm, limited liability company, or corporation may not  
 17 use the name of an existing bank or bank holding company or a name  
 18 confusingly similar to that of an existing bank or bank holding  
 19 company when marketing to or soliciting business from a customer or  
 20 prospective customer if the reference to the existing bank or bank  
 21 holding company is:

22 (1) without the consent of the existing bank or bank holding  
 23 company; and

24 (2) in a manner that could cause a reasonable person to believe  
 25 that the marketing material or solicitation:

26 (A) originated from;

27 (B) is endorsed by; or

28 (C) is in any other way the responsibility of;

29 the existing bank or bank holding company.

30 (m) An existing bank or bank holding company may, in addition to  
 31 any other remedies available under the law, report an alleged violation  
 32 of subsection (l) to the department. If the department finds that the  
 33 marketing material or solicitation in question is in violation of  
 34 subsection (l), the department may direct the person, firm, limited  
 35 liability company, or corporation to cease and desist from using that  
 36 marketing material or solicitation in Indiana. If that person, firm,  
 37 limited liability company, or corporation persists in using the marketing  
 38 material or solicitation, the department may impose a civil penalty of  
 39 up to fifteen thousand dollars (\$15,000) for each violation. Each  
 40 instance in which the marketing material or solicitation is sent to a  
 41 customer or prospective customer constitutes a separate violation of  
 42 subsection (l).

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(n) Nothing in subsection (l) or (m) prohibits the use of or reference to the name of an existing bank or bank holding company in marketing materials or solicitations, if the use or reference does not deceive or confuse a reasonable person regarding whether the marketing material or solicitation:

- (1) originated from;
  - (2) is endorsed by; or
  - (3) is in any other way the responsibility of;
- the existing bank or bank holding company.

(o) The department may adopt rules under IC 4-22-2 to implement this section.

SECTION 5. IC 28-7-1-9, AS AMENDED BY P.L.258-2003, SECTION 10, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 9. A credit union has the following powers:

(1) To issue shares of its capital stock to its members. No commission or compensation shall be paid for securing members or for the sale of shares.

(2) To make loans to members or other credit unions. A loan to another credit union may not exceed twenty percent (20%) of the paid-in capital and surplus of the credit union making the loan.

(3) To make loans to officers, directors, or committee members, but only if:

(A) the loan complies with all requirements under this chapter with respect to loans to other borrowers and is not on terms more favorable than those extended to other borrowers;

(B) upon the making of the loan, the aggregate amount of loans outstanding under this subdivision will not exceed twenty percent (20%) of the unimpaired capital and surplus of the credit union;

(C) the loan is approved by the credit committee or loan officer; and

(D) the borrower takes no part in the consideration of or vote on the application.

(4) To invest in any of the following:

(A) Bonds, notes, or certificates that are the direct or indirect obligations of the United States, or of the state, or the direct obligations of a county, township, city, town, or other taxing district or municipality or instrumentality of Indiana and that are not in default.

(B) Bonds or debentures issued by the Federal Home Loan Bank Act (12 U.S.C. 1421 through 1449) or the Home Owners' Loan Act (12 U.S.C. 1461 through 1468).

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- 1 (C) Interest-bearing obligations of the FSLIC Resolution Fund  
 2 and obligations of national mortgage associations issued under  
 3 the authority of the National Housing Act.  
 4 (D) Mortgages on real estate situated in Indiana which are  
 5 fully insured under Title 2 of the National Housing Act (12  
 6 U.S.C. 1707 through 1715z).  
 7 (E) Obligations issued by farm credit banks and banks for  
 8 cooperatives under the Farm Credit Act of 1971 (12 U.S.C.  
 9 2001 through 2279aa-14).  
 10 (F) In savings and loan associations, other credit unions that  
 11 are insured under IC 28-7-1-31.5 and certificates of  
 12 indebtedness or investment of an industrial loan and  
 13 investment company if the association or company is federally  
 14 insured. Not more than twenty percent (20%) of the assets of  
 15 a credit union may be invested in the shares or certificates of  
 16 an association or company; nor more than forty percent (40%)  
 17 in all such associations and companies.  
 18 (G) Corporate credit unions.  
 19 (H) Federal funds or similar types of daily funds transactions  
 20 with other financial institutions.  
 21 (I) Mutual funds created and controlled by credit unions, credit  
 22 union associations, or their subsidiaries. Mutual funds referred  
 23 to in this clause may invest only in instruments that are  
 24 approved for credit union purchase under this chapter.  
 25 (J) Shares, stocks, or obligations of any credit union service  
 26 organization (as defined in Section 712 of the Rules and  
 27 Regulations of the National Credit Union Administration) with  
 28 the approval of the department. Not more than five percent  
 29 (5%) of the total paid in and unimpaired capital of the credit  
 30 union may be invested under this clause.  
 31 (5) To deposit its funds into:  
 32 (A) depository institutions that are federally insured; or  
 33 (B) state chartered credit unions that are privately insured by  
 34 an insurer approved by the department.  
 35 (6) To purchase, hold, own, or convey real estate as may be  
 36 conveyed to the credit union in satisfaction of debts previously  
 37 contracted or in exchange for real estate conveyed to the credit  
 38 union.  
 39 (7) To own, hold, or convey real estate as may be purchased by  
 40 the credit union upon judgment in its favor or decrees of  
 41 foreclosure upon mortgages.  
 42 (8) To issue shares of stock and upon the terms, conditions,

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1 limitations, and restrictions and with the relative rights as may be  
 2 stated in the bylaws of the credit union, but no stock may have  
 3 preference or priority over the other to share in the assets of the  
 4 credit union upon liquidation or dissolution or for the payment of  
 5 dividends except as to the amount of the dividends and the time  
 6 for the payment of the dividends as provided in the bylaws.

7 (9) To charge the member's share account for the actual cost of  
 8 necessary locator service when the member has failed to keep the  
 9 credit union informed about the member's current address. The  
 10 charge shall be made only for amounts paid to a person or concern  
 11 normally engaged in providing such service, and shall be made  
 12 against the account or accounts of any one (1) member not more  
 13 than once in any twelve (12) month period.

14 (10) To transfer to an accounts payable, a dormant account, or a  
 15 special account share accounts which have been inactive, except  
 16 for dividend credits, for a period of two (2) years. The credit  
 17 union shall not consider the payment of dividends on the  
 18 transferred account.

19 (11) To invest in fixed assets with the funds of the credit union.  
 20 An investment in fixed assets in excess of five percent (5%) of its  
 21 assets is subject to the approval of the department.

22 (12) To establish branch offices, upon approval of the department,  
 23 provided that all books of account shall be maintained at the  
 24 principal office.

25 (13) To pay an interest refund on loans proportionate to the  
 26 interest paid during the dividend period by borrowers who are  
 27 members at the end of the dividend period.

28 (14) To purchase life savings and loan protection insurance for  
 29 the benefit of the credit union and its members, if:

30 (A) the coverage is placed with an insurance company licensed  
 31 to do business in Indiana; and

32 (B) no officer, director, or employee of the credit union  
 33 personally benefits, directly or indirectly, from the sale or  
 34 purchase of the coverage.

35 (15) To sell and cash negotiable checks, travelers checks, and  
 36 money orders for members.

37 (16) To purchase members' notes from any liquidating credit  
 38 union, with written approval from the department, at prices agreed  
 39 upon by the boards of directors of both the liquidating and the  
 40 purchasing credit unions. However, the aggregate of the unpaid  
 41 balances of all notes of liquidating credit unions purchased by any  
 42 one (1) credit union shall not exceed ten percent (10%) of its

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unimpaired capital and surplus unless special written authorization has been granted by the department.

(17) To exercise such incidental powers necessary or requisite to enable it to carry on effectively the business for which it is incorporated.

(18) To act as a custodian or trustee of any trust created or organized in the United States and forming part of a stock bonus, pension, or profit sharing plan which qualifies or qualified for specific tax treatment under Section 408(a) or Section 401(d) of the Internal Revenue Code, if the funds of the trust are invested only in share accounts or insured certificates of the credit union.

(19) To issue shares of its capital stock or insured certificates to a trustee or custodian of a pension plan, profit sharing plan, or stock bonus plan which qualifies for specific tax treatment under Sections 401(d) or 408(a) of the Internal Revenue Code.

(20) A credit union may exercise any rights and privileges that are:

(A) granted to federal credit unions; but

(B) not authorized for credit unions under the Indiana Code (except for this section) or any rule adopted under the Indiana Code;

if the credit union complies with section 9.2 of this chapter.

(21) To sell, pledge, or discount any of its assets. However, a credit union may not pledge any of its assets as security for the safekeeping and prompt payment of any money deposited, except that a credit union may, for the safekeeping and prompt payment of money deposited, give security as authorized by federal law.

(22) To purchase assets of another credit union and to assume the liabilities of the selling credit union.

(23) To act as a fiscal agent of the United States and to receive deposits from nonmember units of the federal, state, or county governments, from political subdivisions, and from other credit unions upon which the credit union may pay varying interest rates at varying maturities subject to terms, rates, and conditions that are established by the board of directors. However, the total amount of public funds received from units of state and county governments and political subdivisions that a credit union may have on deposit may not exceed ~~ten~~ **twenty** percent ~~(10%)~~ **(20%)** of the total assets of that credit union, excluding those public funds.

(24) To join the National Credit Union Administration Central Liquidity Facility.

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(25) To participate in community investment initiatives under the administration of organizations:

(A) exempt from taxation under Section 501(c)(3) of the Internal Revenue Code; and

(B) located or conducting activities in communities in which the credit union does business.

Participation may be in the form of either charitable contributions or participation loans. In either case, disbursement of funds through the administering organization is not required to be limited to members of the credit union. Total contributions or participation loans may not exceed one tenth of one percent (0.001) of total assets of the credit union. A recipient of a contribution or loan is not considered qualified for credit union membership. A contribution or participation loan made under this subdivision must be approved by the board of directors.

(26) To establish and operate an automated teller machine (ATM):

(A) at any location within Indiana; or

(B) as permitted by the laws of the state in which the automated teller machine is to be located.

(27) To demand and receive, for the faithful performance and discharge of services performed under the powers vested in the credit union by this article:

(A) reasonable compensation, or compensation as fixed by agreement of the parties;

(B) all advances necessarily paid out and expended in the discharge and performance of its duties; and

(C) unless otherwise agreed upon, interest at the legal rate on the advances referred to in clause (B).

(28) Subject to any restrictions the department may impose, to become the owner or lessor of personal property acquired upon the request and for the use of a member and to incur additional obligations as may be incident to becoming an owner or lessor of such property.

SECTION 6. IC 28-7-1-9.2, AS ADDED BY P.L.134-2001, SECTION 19, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 9.2. (a) As used in this section, "rights and privileges" means the power:

(1) to:

(A) create;

(B) deliver;

(C) acquire; or

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- 1           ~~(4)~~ **(D)** sell;  
 2           a product, a service, or an investment that is available to or  
 3           offered by; **or**  
 4           **(2) to engage in other activities authorized for;**  
 5           federal credit unions domiciled in Indiana.  
 6           (b) A credit union that intends to exercise any rights and privileges  
 7           that are:  
 8               (1) granted to federal credit unions; but  
 9               (2) not authorized for credit unions under the Indiana Code  
 10              (except for this section) or any rule adopted under the Indiana  
 11              Code;  
 12           shall submit a letter to the department describing in detail the requested  
 13           rights and privileges granted to federal credit unions that the credit  
 14           union intends to exercise. If available, copies of relevant federal law,  
 15           regulations, and interpretive letters must be attached to the letter  
 16           submitted by the credit union.  
 17           (c) The department shall promptly notify the requesting credit union  
 18           of the department's receipt of the letter submitted under subsection (b).  
 19           Except as provided in subsection (e), the credit union may exercise the  
 20           requested rights and privileges sixty (60) days after the date on which  
 21           the department receives the letter unless otherwise notified by the  
 22           department.  
 23           (d) The department, through its members, may prohibit the credit  
 24           union from exercising the requested rights and privileges only if the  
 25           members find that:  
 26               (1) federal credit unions domiciled in Indiana do not possess the  
 27               requested rights and privileges; or  
 28               (2) the exercise of the requested rights and privileges by the credit  
 29               union would adversely affect the safety and soundness of the  
 30               credit union.  
 31           (e) The sixty (60) day period referred to in subsection (c) may be  
 32           extended by the department based on a determination that the credit  
 33           union's letter raised issues requiring additional information or  
 34           additional time for analysis. If the sixty (60) day period is extended  
 35           under this subsection, the credit union may exercise the requested  
 36           rights and privileges only if the credit union receives prior written  
 37           approval from the department. However:  
 38               (1) the members must:  
 39                   (A) approve or deny the requested rights and privileges; or  
 40                   (B) convene a hearing;  
 41               not later than sixty (60) days after the department receives the  
 42               credit union's letter; and

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(2) if a hearing is convened, the members must approve or deny the requested rights and privileges not later than sixty (60) days after the hearing is concluded.

(f) The exercise of rights and privileges by a credit union in compliance with and in the manner authorized by this section is not a violation of any provision of the Indiana Code or rules adopted under IC 4-22-2.

(g) Whenever, in compliance with this section, a credit union exercises rights and privileges granted to federal credit unions domiciled in Indiana, all credit unions may exercise the same rights and privileges if the department by order determines that the exercise of the rights and privileges by all credit unions would not adversely affect their safety and soundness.

(h) If the department denies the request of a credit union under this section to exercise any rights and privileges that are granted to federal credit unions, the credit union may appeal the decision of the department to the circuit court with jurisdiction in the county in which the principal office of the credit union is located. In an appeal under this section, the court shall determine the matter de novo.

SECTION 7. IC 28-8-4-27 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 27. (a) Except as provided in section 29 of this chapter, an application must be accompanied by a security device that secures the faithful performance of the obligations of the licensee to receive, handle, transmit, and pay money in connection with the:

- (1) sale and issuance of payment instruments; or
- (2) transmission of money.

(b) The security device required under subsection (a) must:

- (1) be in an amount as provided under subsection (c);
- (2) run to the state; and
- (3) be in a form acceptable to the director.

(c) The security device must be in an amount calculated as follows:

STEP ONE: Subtract one (1) from the number of locations where the applicant proposes to engage in business under the license.

STEP TWO: Multiply the difference determined under STEP ONE by ten thousand dollars (\$10,000).

STEP THREE: Add ~~one~~ **two** hundred thousand dollars ~~(\$100,000)~~ **(\$200,000)** to the product determined under STEP TWO.

STEP FOUR: Pay the amount that is the lesser of:

- (1) the sum determined in STEP THREE; or
- (2) ~~two~~ **three** hundred thousand dollars ~~(\$200,000)~~ **(\$300,000)**.

(d) If the security device filed is a bond, the aggregate liability of the

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surety shall not exceed the principal sum of the bond.

SECTION 8. IC 28-8-4-33 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 33. (a) A license granted under this chapter permits a licensee to conduct business:

(1) at one (1) or more locations directly or indirectly owned by the licensee; or

(2) through one (1) or more authorized delegates.

(b) Each licensee shall maintain a policy of insurance issued by an insurer authorized to do business in Indiana that insures the applicant against loss by a criminal act or act of dishonesty. The principal sum of the policy shall be equivalent to ~~one-half (1/2)~~ **the amount** of the required security device required under section 27 of this chapter or deposit required under section 29 of this chapter.

(c) Except as provided in subsection (d), a licensee must at all times possess permissible investments with an aggregate market value calculated in accordance with generally accepted accounting principles of not less than the aggregate face amount of all outstanding payment instruments issued or sold by the licensee or an authorized delegate of the licensee in the United States.

(d) The director may waive the permissible investments requirement in subsection (c) if the dollar volume of a licensee's outstanding payment instruments does not exceed:

(1) the security device posted by the licensee under section 27 of this chapter; or

(2) the deposit made by the licensee under section 29 of this chapter.

(e) A licensee that is a corporation must at all times be in good standing with the secretary of state of the state in which the licensee was incorporated.

SECTION 9. IC 28-10-1-1, AS AMENDED BY P.L.258-2003, SECTION 18, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2004 (RETROACTIVE)]: Sec. 1. A reference to a federal law or federal regulation in IC 28 is a reference to the law or regulation in effect January 1, ~~2003~~ **2004**.

SECTION 10. IC 28-11-3-6 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 6. (a) **As used in this section:**

(1) **"federally chartered" means an entity organized or reorganized under the law of the United States; and**

(2) **"state chartered" means an entity organized or reorganized under the law of Indiana or another state.**

(b) **If the department determines that federal law has preempted**

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a provision of IC 24, IC 26, IC 28, IC 29, or IC 30, the provision of IC 24, IC 26, IC 28, IC 29, or IC 30 applies to a state chartered entity only to the same extent that the department determines the provision is applicable to the:

- (1) same; or
  - (2) functionally equivalent;
- type of federally chartered entity.

(c) A state chartered entity seeking an exemption from a provision of IC 24, IC 26, IC 28, IC 29, or IC 30 based on the preemption of the provision as applied to a federally chartered entity shall submit a letter to the department:

- (1) describing in detail; and
  - (2) documenting the federal preemption of;
- the provisions from which it seeks exemption. If available, copies of relevant federal law, regulations, and interpretive letters must be attached to the letter submitted by the requesting entity.

(d) The department shall notify the requesting entity within ten (10) business days after the department's receipt of a letter described in subsection (c). Except as provided in subsection (e), upon receipt of the notification, the requesting entity may operate as if it is exempt from the provision of IC 24, IC 26, IC 28, IC 29, or IC 30 for ninety (90) days after the date on which the department receives the letter, unless otherwise notified by the department. This period may be extended if the department determines that the requesting entity's letter raises issues requiring additional information or additional time for analysis. If the department extends the period, the requesting entity may operate as if the requesting entity is exempt from a provision of IC 24, IC 26, IC 28, IC 29, or IC 30 only if the requesting entity receives prior written approval from the department. However:

- (1) the department must:
  - (A) approve or deny the requested exemption; or
  - (B) convene a hearing;
 not later than ninety (90) days after the department receives the requesting entity's letter; and
- (2) if a hearing is convened, the department must approve or deny the requested exemption not later than ninety (90) days after the hearing is concluded.

(e) The department may refuse to exempt a requesting entity from a provision of IC 24, IC 26, IC 28, IC 29, or IC 30 if the department finds that any of the following conditions apply:

- (1) The department determines that a described provision of

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IC 24, IC 26, IC 28, IC 29, or IC 30 is not preempted for a federally chartered entity of the:

(A) same; or

(B) functionally equivalent;  
type.

(2) The extension of the federal preemption in the form of an exemption from a provision of IC 24, IC 26, IC 28, IC 29, or IC 30 to the requesting entity would:

(A) adversely affect the safety and soundness of the requesting entity; or

(B) result in an unacceptable curtailment of consumer protection provisions.

(3) The failure of the department to provide for the exemption from a provision of IC 24, IC 26, IC 28, IC 29, or IC 30 will not result in a competitive disadvantage to the requesting entity.

(f) The operation of a financial institution in a manner consistent with exemption from a provision of IC 24, IC 26, IC 28, IC 29, or IC 30 under this section is not a violation of any provision of the Indiana Code or rules adopted under IC 4-22-2.

(g) If a financial institution is exempted from the provisions of IC 24, IC 26, IC 28, IC 29, or IC 30 in compliance with this section, the department shall do the following:

(1) Determine whether the exemption shall apply to all financial institutions that, in the opinion of the department, possess a charter that is:

(A) the same as; or

(B) functionally the equivalent of;  
the charter of the exempt institution.

(2) For purposes of the determination required under subdivision (1), ensure that applying the exemption to the financial institutions described in subdivision (1) will not:

(A) adversely affect the safety and soundness of the financial institutions; or

(B) unduly constrain Indiana consumer protection provisions.

(3) Issue an order published in the Indiana Register that specifies whether the exemption applies to the financial institutions described in subdivision (1).

(h) If the department denies the request of a financial institution under this section for exemption from Indiana Code provisions that are preempted for federally chartered institutions, the

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1 **requesting institution may appeal the decision of the department**  
 2 **to the circuit court of the county in which the principal office of the**  
 3 **requesting institution is located.**

4 SECTION 11. IC 28-13-9-9 IS AMENDED TO READ AS  
 5 FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 9. (a) Unless the  
 6 articles of incorporation provide otherwise, if a vacancy occurs on a  
 7 board of directors, including a vacancy resulting from an increase in  
 8 the number of directors:

9 (1) the board of directors may fill the vacancy; or

10 (2) if the directors remaining in office constitute fewer than a  
 11 quorum of the board, the directors may fill the vacancy by the  
 12 affirmative vote of a majority of all the directors remaining in  
 13 office.

14 (b) If the vacant office was held by a director elected by a voting  
 15 group of shareholders, only the holders of shares of that voting group  
 16 are entitled to vote to fill the vacancy if it is filled by the shareholders.

17 (c) A vacancy that will occur at a specific later date by reason of a  
 18 resignation effective at a later date under section 7(b) of this chapter or  
 19 otherwise may be filled before the vacancy occurs. However, the new  
 20 director may not take office until the vacancy occurs.

21 **(d) If:**

22 **(1) a vacancy occurs on a board of directors; and**

23 **(2) the vacancy is not filled by a competent replacement**  
 24 **through the institution's normal election process within a**  
 25 **period considered reasonable by the department of financial**  
 26 **institutions;**

27 **the director of the department may appoint to the board of**  
 28 **directors a person whom the director considers capable of**  
 29 **providing competent leadership and decision making ability.**

30 **(e) A person appointed under subsection (d):**

31 **(1) may serve until the director of the department determines**  
 32 **that the institution has filled the vacancy through the**  
 33 **institution's normal election process; and**

34 **(2) may not serve on a board of directors for a period of more**  
 35 **than two (2) years, unless elected through the institution's**  
 36 **normal election process.**

37 SECTION 12. IC 28-13-16-4, AS AMENDED BY P.L.258-2003,  
 38 SECTION 29, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 39 JULY 1, 2004]: Sec. 4. (a) A financial institution or any of its  
 40 subsidiaries may acquire or establish a qualifying subsidiary by  
 41 providing the department with written notice before acquiring or  
 42 establishing the subsidiary. The department shall notify the requesting

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1 financial institution of the department's receipt of the notice.

2 (b) A subsidiary may exercise a power or engage in an activity  
3 permitted to be performed by a financial institution under the same  
4 conditions and restrictions as if the power or activity is performed by  
5 the financial institution itself, or the activity has been authorized ~~by~~ **as**  
6 **"activity eligible for notice" procedures under 12 CFR**  
7 ~~5.34(e)(2)(ii): 5.34(e).~~

8 (c) The qualified subsidiary may exercise or engage in the activity  
9 thirty (30) days after the date on which the department receives the  
10 notification unless otherwise notified by the department.

11 SECTION 13. IC 28-13-16-5, AS ADDED BY P.L.215-1999,  
12 SECTION 10, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
13 JULY 1, 2004]: Sec. 5. A financial institution may acquire or establish  
14 a nonqualifying subsidiary by submitting an application to the  
15 department containing:

16 (1) a complete description of the financial institution's investment  
17 in the subsidiary;

18 (2) the activity to be conducted; and

19 (3) a representation that the activity:

20 (A) could be performed by a financial institution under  
21 statutory authority of this title;

22 (B) is a part of or incidental to the business of banking as  
23 determined by the director; or

24 (C) has been authorized ~~by~~ **as "activity eligible for notice"**  
25 **procedures under 12 CFR 5.34(e)(2)(ii): 5.34(e).**

26 The department shall notify the requesting financial institution of the  
27 department's receipt of the application.

28 SECTION 14. IC 28-15-2-2 IS AMENDED TO READ AS  
29 FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 2. (a) As used in this  
30 section, "rights and privileges" means the power:

31 (1) to:

32 ~~(1)~~ (A) create;

33 ~~(2)~~ (B) deliver;

34 ~~(3)~~ (C) acquire; or

35 ~~(4)~~ (D) sell;

36 a ~~product or service~~ **product, a service, or an investment** that is  
37 available to or offered by; or

38 **(2) to engage in other activities authorized for;**

39 federal savings associations **domiciled in Indiana.**

40 (b) Subject to this section, savings associations may exercise the  
41 rights and privileges that are granted to federal savings associations.

42 (c) A savings association that intends to exercise any rights and

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1 privileges that are:

2 (1) granted to federal savings associations; but

3 (2) not authorized for savings associations under:

4 (A) the Indiana Code (except for this section); or

5 (B) a rule adopted under IC 4-22-2;

6 shall submit a letter to the department, describing in detail the  
7 requested rights and privileges granted to federal savings associations  
8 that the savings association intends to exercise. If available, copies of  
9 relevant federal law, regulations, and interpretive letters must be  
10 attached to the letter.

11 (d) The department shall promptly notify the requesting savings  
12 association of its receipt of the letter submitted under subsection (c).  
13 Except as provided in subsection (f), the savings association may  
14 exercise the requested rights and privileges sixty (60) days after the  
15 date on which the department receives the letter unless otherwise  
16 notified by the department.

17 (e) The department, through its members, may prohibit the savings  
18 association from exercising the requested rights and privileges only if  
19 the members find that:

20 (1) federal savings associations in Indiana do not possess the  
21 requested rights and privileges; or

22 (2) the exercise of the requested rights and privileges by the  
23 savings association would adversely affect the safety and  
24 soundness of the savings association.

25 (f) The sixty (60) day period referred to in subsection (d) may be  
26 extended by the department based on a determination that the savings  
27 association letter raises issues requiring additional information or  
28 additional time for analysis. If the sixty (60) day period is extended  
29 under this subsection, the savings association may exercise the  
30 requested rights and privileges only if the savings association receives  
31 prior written approval from the department. However:

32 (1) the members must:

33 (A) approve or deny the requested rights and privileges; or

34 (B) convene a hearing;

35 not later than sixty (60) days after the department receives the  
36 savings association's letter; and

37 (2) if a hearing is convened, the members must approve or deny  
38 the requested rights and privileges not later than sixty (60) days  
39 after the hearing is concluded.

40 (g) The exercise of rights and privileges by a savings association in  
41 compliance with and in the manner authorized by this section does not  
42 constitute a violation of any provision of the Indiana Code or rules

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adopted under IC 4-22-2.

(h) Whenever, in compliance with this section, a savings association exercises rights and privileges granted to national savings associations domiciled in Indiana, all savings associations may exercise the same rights and privileges if the department by order determines that the exercise of the rights and privileges by all savings associations would not adversely affect their safety and soundness.

SECTION 15. IC 32-17-9-6, AS ADDED BY P.L.2-2002, SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 6. As used in this chapter, "security account" means:

(1) a reinvestment account associated with a security, a securities account with a broker, a cash balance in a brokerage account, cash, interest, earnings, or dividends earned or declared on a security in an account, a reinvestment account, or a brokerage account, whether or not credited to the account before the owner's death; ~~or~~

**(2) an investment management or custody account with a trust company or a trust department of a bank with trust powers, including the securities in the account, a cash balance in the account, cash, cash equivalents, interest, earnings, or dividends earned or declared on a security in the account, whether or not credited to the account before the owner's death; or**

**(3) a cash balance or other property held for or due to the owner of a security as a replacement for or product of an account security, regardless of whether the cash was credited to the account before the owner's death.**

SECTION 16. IC 32-29-1-2.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: **Sec. 2.5. A mortgagee or a mortgagee's assignee or representative may not require a mortgagor, as a condition of receiving or maintaining a mortgage, to obtain hazard insurance coverage against risks to improvements on the mortgaged property in an amount exceeding the replacement value of the improvements.**

SECTION 17. An emergency is declared for this act.

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COMMITTEE REPORT

Madam President: The Senate Committee on Insurance and Financial Institutions, to which was referred Senate Bill No. 222, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill DO PASS.

(Reference is made to Senate Bill 222 as introduced.)

PAUL, Chairperson

Committee Vote: Yeas 7, Nays 0.

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## COMMITTEE REPORT

Mr. Speaker: Your Committee on Financial Institutions, to which was referred Senate Bill 222, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 2, between lines 19 and 20, begin a new paragraph and insert:

"SECTION 2. IC 24-4.5-1-102, AS AMENDED BY P.L.258-2003, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2004 (RETROACTIVE)]: Sec. 102. Purposes; Rules of Construction—(1) This article shall be liberally construed and applied to promote its underlying purposes and policies.

(2) The underlying purposes and policies of this article are:

- (a) to simplify, clarify, and modernize the law governing retail installment sales, consumer credit, small loans, and usury;
- (b) to provide rate ceilings to assure an adequate supply of credit to consumers;
- (c) to further consumer understanding of the terms of credit transactions and to foster competition among suppliers of consumer credit so that consumers may obtain credit at reasonable cost;
- (d) to protect consumer buyers, lessees, and borrowers against unfair practices by some suppliers of consumer credit, having due regard for the interests of legitimate and scrupulous creditors;
- (e) to permit and encourage the development of fair and economically sound consumer credit practices;
- (f) to conform the regulation of consumer credit transactions to the policies of the Federal Consumer Credit Protection Act; and
- (g) to make uniform the law including administrative rules among the various jurisdictions.

(3) A reference to a requirement imposed by this article includes reference to a related rule of the department adopted pursuant to this article.

(4) A reference to a federal law in IC 24-4.5 is a reference to the law in effect December 31, ~~2002~~ 2003.

SECTION 3. IC 28-1-11-3.2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 3.2. (a) As used in this section, "rights and privileges" means the power:

(1) to:

- (1) (A) create;
- (2) (B) deliver;
- (3) (C) acquire; or
- (4) (D) sell;

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a product, a service, or an investment that is available to or offered by; **or**

**(2) to engage in other activities authorized for;**

national banks domiciled in Indiana.

(b) A bank that intends to exercise any rights and privileges that are:

(1) granted to national banks; but

(2) not authorized for banks under the Indiana Code (except for this section) or any rule adopted under the Indiana Code;

shall submit a letter to the department describing in detail the requested rights and privileges granted to national banks that the bank intends to exercise. If available, copies of relevant federal law, regulations, and interpretive letters must be attached to the letter submitted by the bank.

(c) The department shall promptly notify the requesting bank of the department's receipt of the letter submitted under subsection (b). Except as provided in subsection (e), the bank may exercise the requested rights and privileges sixty (60) days after the date on which the department receives the letter unless otherwise notified by the department.

(d) The department, through its members, may prohibit the bank from exercising the requested rights and privileges only if the members find that:

(1) national banks domiciled in Indiana do not possess the requested rights and privileges; or

(2) the exercise of the requested rights and privileges by the bank would adversely affect the safety and soundness of the bank.

(e) The sixty (60) day period referred to in subsection (c) may be extended by the department based on a determination that the bank's letter raised issues requiring additional information or additional time for analysis. If the sixty (60) day period is extended under this subsection, the bank may exercise the requested rights and privileges only if the bank receives prior written approval from the department.

However:

(1) the members must:

(A) approve or deny the requested rights and privileges; or

(B) convene a hearing;

not later than sixty (60) days after the department receives the bank's letter; and

(2) if a hearing is convened, the members must approve or deny the requested rights and privileges not later than sixty (60) days after the hearing is concluded.

(f) The exercise of rights and privileges by a bank in compliance with and in the manner authorized by this section is not a violation of

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any provision of the Indiana Code or rules adopted under IC 4-22-2.

(g) Whenever, in compliance with this section, a bank exercises rights and privileges granted to national banks domiciled in Indiana, all banks may exercise the same rights and privileges if the department by order determines that the exercise of the rights and privileges by all banks would not adversely affect their safety and soundness.

(h) If the department denies the request of a bank under this section to exercise any rights and privileges that are granted to national banks, the bank may appeal the decision of the department to the circuit court with jurisdiction in the county in which the principal office of the bank is located. In an appeal under this section, the court shall determine the matter de novo."

Page 2, line 26, after "company," insert **"a subsidiary of a savings bank, a subsidiary of a savings association,"**.

Page 5, after line 4, begin a new paragraph and insert:

"SECTION 5. IC 28-7-1-9, AS AMENDED BY P.L.258-2003, SECTION 10, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 9. A credit union has the following powers:

- (1) To issue shares of its capital stock to its members. No commission or compensation shall be paid for securing members or for the sale of shares.
- (2) To make loans to members or other credit unions. A loan to another credit union may not exceed twenty percent (20%) of the paid-in capital and surplus of the credit union making the loan.
- (3) To make loans to officers, directors, or committee members, but only if:
  - (A) the loan complies with all requirements under this chapter with respect to loans to other borrowers and is not on terms more favorable than those extended to other borrowers;
  - (B) upon the making of the loan, the aggregate amount of loans outstanding under this subdivision will not exceed twenty percent (20%) of the unimpaired capital and surplus of the credit union;
  - (C) the loan is approved by the credit committee or loan officer; and
  - (D) the borrower takes no part in the consideration of or vote on the application.
- (4) To invest in any of the following:
  - (A) Bonds, notes, or certificates that are the direct or indirect obligations of the United States, or of the state, or the direct obligations of a county, township, city, town, or other taxing district or municipality or instrumentality of Indiana and that

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are not in default.

(B) Bonds or debentures issued by the Federal Home Loan Bank Act (12 U.S.C. 1421 through 1449) or the Home Owners' Loan Act (12 U.S.C. 1461 through 1468).

(C) Interest-bearing obligations of the FSLIC Resolution Fund and obligations of national mortgage associations issued under the authority of the National Housing Act.

(D) Mortgages on real estate situated in Indiana which are fully insured under Title 2 of the National Housing Act (12 U.S.C. 1707 through 1715z).

(E) Obligations issued by farm credit banks and banks for cooperatives under the Farm Credit Act of 1971 (12 U.S.C. 2001 through 2279aa-14).

(F) In savings and loan associations, other credit unions that are insured under IC 28-7-1-31.5 and certificates of indebtedness or investment of an industrial loan and investment company if the association or company is federally insured. Not more than twenty percent (20%) of the assets of a credit union may be invested in the shares or certificates of an association or company; nor more than forty percent (40%) in all such associations and companies.

(G) Corporate credit unions.

(H) Federal funds or similar types of daily funds transactions with other financial institutions.

(I) Mutual funds created and controlled by credit unions, credit union associations, or their subsidiaries. Mutual funds referred to in this clause may invest only in instruments that are approved for credit union purchase under this chapter.

(J) Shares, stocks, or obligations of any credit union service organization (as defined in Section 712 of the Rules and Regulations of the National Credit Union Administration) with the approval of the department. Not more than five percent (5%) of the total paid in and unimpaired capital of the credit union may be invested under this clause.

(5) To deposit its funds into:

(A) depository institutions that are federally insured; or

(B) state chartered credit unions that are privately insured by an insurer approved by the department.

(6) To purchase, hold, own, or convey real estate as may be conveyed to the credit union in satisfaction of debts previously contracted or in exchange for real estate conveyed to the credit union.

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(7) To own, hold, or convey real estate as may be purchased by the credit union upon judgment in its favor or decrees of foreclosure upon mortgages.

(8) To issue shares of stock and upon the terms, conditions, limitations, and restrictions and with the relative rights as may be stated in the bylaws of the credit union, but no stock may have preference or priority over the other to share in the assets of the credit union upon liquidation or dissolution or for the payment of dividends except as to the amount of the dividends and the time for the payment of the dividends as provided in the bylaws.

(9) To charge the member's share account for the actual cost of necessary locator service when the member has failed to keep the credit union informed about the member's current address. The charge shall be made only for amounts paid to a person or concern normally engaged in providing such service, and shall be made against the account or accounts of any one (1) member not more than once in any twelve (12) month period.

(10) To transfer to an accounts payable, a dormant account, or a special account share accounts which have been inactive, except for dividend credits, for a period of two (2) years. The credit union shall not consider the payment of dividends on the transferred account.

(11) To invest in fixed assets with the funds of the credit union. An investment in fixed assets in excess of five percent (5%) of its assets is subject to the approval of the department.

(12) To establish branch offices, upon approval of the department, provided that all books of account shall be maintained at the principal office.

(13) To pay an interest refund on loans proportionate to the interest paid during the dividend period by borrowers who are members at the end of the dividend period.

(14) To purchase life savings and loan protection insurance for the benefit of the credit union and its members, if:

(A) the coverage is placed with an insurance company licensed to do business in Indiana; and

(B) no officer, director, or employee of the credit union personally benefits, directly or indirectly, from the sale or purchase of the coverage.

(15) To sell and cash negotiable checks, travelers checks, and money orders for members.

(16) To purchase members' notes from any liquidating credit union, with written approval from the department, at prices agreed

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upon by the boards of directors of both the liquidating and the purchasing credit unions. However, the aggregate of the unpaid balances of all notes of liquidating credit unions purchased by any one (1) credit union shall not exceed ten percent (10%) of its unimpaired capital and surplus unless special written authorization has been granted by the department.

(17) To exercise such incidental powers necessary or requisite to enable it to carry on effectively the business for which it is incorporated.

(18) To act as a custodian or trustee of any trust created or organized in the United States and forming part of a stock bonus, pension, or profit sharing plan which qualifies or qualified for specific tax treatment under Section 408(a) or Section 401(d) of the Internal Revenue Code, if the funds of the trust are invested only in share accounts or insured certificates of the credit union.

(19) To issue shares of its capital stock or insured certificates to a trustee or custodian of a pension plan, profit sharing plan, or stock bonus plan which qualifies for specific tax treatment under Sections 401(d) or 408(a) of the Internal Revenue Code.

(20) A credit union may exercise any rights and privileges that are:

(A) granted to federal credit unions; but

(B) not authorized for credit unions under the Indiana Code (except for this section) or any rule adopted under the Indiana Code;

if the credit union complies with section 9.2 of this chapter.

(21) To sell, pledge, or discount any of its assets. However, a credit union may not pledge any of its assets as security for the safekeeping and prompt payment of any money deposited, except that a credit union may, for the safekeeping and prompt payment of money deposited, give security as authorized by federal law.

(22) To purchase assets of another credit union and to assume the liabilities of the selling credit union.

(23) To act as a fiscal agent of the United States and to receive deposits from nonmember units of the federal, state, or county governments, from political subdivisions, and from other credit unions upon which the credit union may pay varying interest rates at varying maturities subject to terms, rates, and conditions that are established by the board of directors. However, the total amount of public funds received from units of state and county governments and political subdivisions that a credit union may have on deposit may not exceed ~~ten~~ **twenty** percent ~~(10%)~~ **(20%)**

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of the total assets of that credit union, excluding those public funds.

(24) To join the National Credit Union Administration Central Liquidity Facility.

(25) To participate in community investment initiatives under the administration of organizations:

(A) exempt from taxation under Section 501(c)(3) of the Internal Revenue Code; and

(B) located or conducting activities in communities in which the credit union does business.

Participation may be in the form of either charitable contributions or participation loans. In either case, disbursement of funds through the administering organization is not required to be limited to members of the credit union. Total contributions or participation loans may not exceed one tenth of one percent (0.001) of total assets of the credit union. A recipient of a contribution or loan is not considered qualified for credit union membership. A contribution or participation loan made under this subdivision must be approved by the board of directors.

(26) To establish and operate an automated teller machine (ATM):

(A) at any location within Indiana; or

(B) as permitted by the laws of the state in which the automated teller machine is to be located.

(27) To demand and receive, for the faithful performance and discharge of services performed under the powers vested in the credit union by this article:

(A) reasonable compensation, or compensation as fixed by agreement of the parties;

(B) all advances necessarily paid out and expended in the discharge and performance of its duties; and

(C) unless otherwise agreed upon, interest at the legal rate on the advances referred to in clause (B).

(28) Subject to any restrictions the department may impose, to become the owner or lessor of personal property acquired upon the request and for the use of a member and to incur additional obligations as may be incident to becoming an owner or lessor of such property.

SECTION 6. IC 28-7-1-9.2, AS ADDED BY P.L.134-2001, SECTION 19, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 9.2. (a) As used in this section, "rights and privileges" means the power:

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(1) to:

- (1) (A) create;
- (2) (B) deliver;
- (3) (C) acquire; or
- (4) (D) sell;

a product, a service, or an investment that is available to or offered by; **or**

**(2) to engage in other activities authorized for;**

federal credit unions domiciled in Indiana.

(b) A credit union that intends to exercise any rights and privileges that are:

- (1) granted to federal credit unions; but
- (2) not authorized for credit unions under the Indiana Code (except for this section) or any rule adopted under the Indiana Code;

shall submit a letter to the department describing in detail the requested rights and privileges granted to federal credit unions that the credit union intends to exercise. If available, copies of relevant federal law, regulations, and interpretive letters must be attached to the letter submitted by the credit union.

(c) The department shall promptly notify the requesting credit union of the department's receipt of the letter submitted under subsection (b). Except as provided in subsection (e), the credit union may exercise the requested rights and privileges sixty (60) days after the date on which the department receives the letter unless otherwise notified by the department.

(d) The department, through its members, may prohibit the credit union from exercising the requested rights and privileges only if the members find that:

- (1) federal credit unions domiciled in Indiana do not possess the requested rights and privileges; or
- (2) the exercise of the requested rights and privileges by the credit union would adversely affect the safety and soundness of the credit union.

(e) The sixty (60) day period referred to in subsection (c) may be extended by the department based on a determination that the credit union's letter raised issues requiring additional information or additional time for analysis. If the sixty (60) day period is extended under this subsection, the credit union may exercise the requested rights and privileges only if the credit union receives prior written approval from the department. However:

- (1) the members must:

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(A) approve or deny the requested rights and privileges; or

(B) convene a hearing;

not later than sixty (60) days after the department receives the credit union's letter; and

(2) if a hearing is convened, the members must approve or deny the requested rights and privileges not later than sixty (60) days after the hearing is concluded.

(f) The exercise of rights and privileges by a credit union in compliance with and in the manner authorized by this section is not a violation of any provision of the Indiana Code or rules adopted under IC 4-22-2.

(g) Whenever, in compliance with this section, a credit union exercises rights and privileges granted to federal credit unions domiciled in Indiana, all credit unions may exercise the same rights and privileges if the department by order determines that the exercise of the rights and privileges by all credit unions would not adversely affect their safety and soundness.

(h) If the department denies the request of a credit union under this section to exercise any rights and privileges that are granted to federal credit unions, the credit union may appeal the decision of the department to the circuit court with jurisdiction in the county in which the principal office of the credit union is located. In an appeal under this section, the court shall determine the matter de novo.

SECTION 7. IC 28-8-4-27 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 27. (a) Except as provided in section 29 of this chapter, an application must be accompanied by a security device that secures the faithful performance of the obligations of the licensee to receive, handle, transmit, and pay money in connection with the:

(1) sale and issuance of payment instruments; or

(2) transmission of money.

(b) The security device required under subsection (a) must:

(1) be in an amount as provided under subsection (c);

(2) run to the state; and

(3) be in a form acceptable to the director.

(c) The security device must be in an amount calculated as follows:

STEP ONE: Subtract one (1) from the number of locations where the applicant proposes to engage in business under the license.

STEP TWO: Multiply the difference determined under STEP ONE by ten thousand dollars (\$10,000).

STEP THREE: Add ~~one two~~ hundred thousand dollars (~~\$100,000~~) (\$200,000) to the product determined under STEP TWO.

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STEP FOUR: Pay the amount that is the lesser of:

(1) the sum determined in STEP THREE; or

(2) ~~two~~ **three** hundred thousand dollars ~~(\$200,000): (\$300,000).~~

(d) If the security device filed is a bond, the aggregate liability of the surety shall not exceed the principal sum of the bond.

SECTION 8. IC 28-8-4-33 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 33. (a) A license granted under this chapter permits a licensee to conduct business:

(1) at one (1) or more locations directly or indirectly owned by the licensee; or

(2) through one (1) or more authorized delegates.

(b) Each licensee shall maintain a policy of insurance issued by an insurer authorized to do business in Indiana that insures the applicant against loss by a criminal act or act of dishonesty. The principal sum of the policy shall be equivalent to ~~one-half (1/2)~~ **the amount** of the required security device required under section 27 of this chapter or deposit required under section 29 of this chapter.

(c) Except as provided in subsection (d), a licensee must at all times possess permissible investments with an aggregate market value calculated in accordance with generally accepted accounting principles of not less than the aggregate face amount of all outstanding payment instruments issued or sold by the licensee or an authorized delegate of the licensee in the United States.

(d) The director may waive the permissible investments requirement in subsection (c) if the dollar volume of a licensee's outstanding payment instruments does not exceed:

(1) the security device posted by the licensee under section 27 of this chapter; or

(2) the deposit made by the licensee under section 29 of this chapter.

(e) A licensee that is a corporation must at all times be in good standing with the secretary of state of the state in which the licensee was incorporated.

SECTION 9. IC 28-10-1-1, AS AMENDED BY P.L.258-2003, SECTION 18, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2004 (RETROACTIVE)]: Sec. 1. A reference to a federal law or federal regulation in IC 28 is a reference to the law or regulation in effect January 1, ~~2003~~: **2004**.

SECTION 10. IC 28-11-3-6 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: **Sec. 6. (a) As used in this section:**

(1) **"federally chartered" means an entity organized or**

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reorganized under the law of the United States; and

(2) "state chartered" means an entity organized or reorganized under the law of Indiana or another state.

(b) If the department determines that federal law has preempted a provision of IC 24, IC 26, IC 28, IC 29, or IC 30, the provision of IC 24, IC 26, IC 28, IC 29, or IC 30 applies to a state chartered entity only to the same extent that the department determines the provision is applicable to the:

(1) same; or

(2) functionally equivalent;

type of federally chartered entity.

(c) A state chartered entity seeking an exemption from a provision of IC 24, IC 26, IC 28, IC 29, or IC 30 based on the preemption of the provision as applied to a federally chartered entity shall submit a letter to the department:

(1) describing in detail; and

(2) documenting the federal preemption of;

the provisions from which it seeks exemption. If available, copies of relevant federal law, regulations, and interpretive letters must be attached to the letter submitted by the requesting entity.

(d) The department shall notify the requesting entity within ten (10) business days after the department's receipt of a letter described in subsection (c). Except as provided in subsection (e), upon receipt of the notification, the requesting entity may operate as if it is exempt from the provision of IC 24, IC 26, IC 28, IC 29, or IC 30 for ninety (90) days after the date on which the department receives the letter, unless otherwise notified by the department. This period may be extended if the department determines that the requesting entity's letter raises issues requiring additional information or additional time for analysis. If the department extends the period, the requesting entity may operate as if the requesting entity is exempt from a provision of IC 24, IC 26, IC 28, IC 29, or IC 30 only if the requesting entity receives prior written approval from the department. However:

(1) the department must:

(A) approve or deny the requested exemption; or

(B) convene a hearing;

not later than ninety (90) days after the department receives the requesting entity's letter; and

(2) if a hearing is convened, the department must approve or deny the requested exemption not later than ninety (90) days after the hearing is concluded.

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(e) The department may refuse to exempt a requesting entity from a provision of IC 24, IC 26, IC 28, IC 29, or IC 30 if the department finds that any of the following conditions apply:

(1) The department determines that a described provision of IC 24, IC 26, IC 28, IC 29, or IC 30 is not preempted for a federally chartered entity of the:

(A) same; or

(B) functionally equivalent;

type.

(2) The extension of the federal preemption in the form of an exemption from a provision of IC 24, IC 26, IC 28, IC 29, or IC 30 to the requesting entity would:

(A) adversely affect the safety and soundness of the requesting entity; or

(B) result in an unacceptable curtailment of consumer protection provisions.

(3) The failure of the department to provide for the exemption from a provision of IC 24, IC 26, IC 28, IC 29, or IC 30 will not result in a competitive disadvantage to the requesting entity.

(f) The operation of a financial institution in a manner consistent with exemption from a provision of IC 24, IC 26, IC 28, IC 29, or IC 30 under this section is not a violation of any provision of the Indiana Code or rules adopted under IC 4-22-2.

(g) If a financial institution is exempted from the provisions of IC 24, IC 26, IC 28, IC 29, or IC 30 in compliance with this section, the department shall do the following:

(1) Determine whether the exemption shall apply to all financial institutions that, in the opinion of the department, possess a charter that is:

(A) the same as; or

(B) functionally the equivalent of;

the charter of the exempt institution.

(2) For purposes of the determination required under subdivision (1), ensure that applying the exemption to the financial institutions described in subdivision (1) will not:

(A) adversely affect the safety and soundness of the financial institutions; or

(B) unduly constrain Indiana consumer protection provisions.

(3) Issue an order published in the Indiana Register that specifies whether the exemption applies to the financial

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**institutions described in subdivision (1).**

**(h) If the department denies the request of a financial institution under this section for exemption from Indiana Code provisions that are preempted for federally chartered institutions, the requesting institution may appeal the decision of the department to the circuit court of the county in which the principal office of the requesting institution is located.**

SECTION 11. IC 28-13-9-9 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 9. (a) Unless the articles of incorporation provide otherwise, if a vacancy occurs on a board of directors, including a vacancy resulting from an increase in the number of directors:

- (1) the board of directors may fill the vacancy; or
- (2) if the directors remaining in office constitute fewer than a quorum of the board, the directors may fill the vacancy by the affirmative vote of a majority of all the directors remaining in office.

(b) If the vacant office was held by a director elected by a voting group of shareholders, only the holders of shares of that voting group are entitled to vote to fill the vacancy if it is filled by the shareholders.

(c) A vacancy that will occur at a specific later date by reason of a resignation effective at a later date under section 7(b) of this chapter or otherwise may be filled before the vacancy occurs. However, the new director may not take office until the vacancy occurs.

**(d) If:**

- (1) a vacancy occurs on a board of directors; and**
- (2) the vacancy is not filled by a competent replacement through the institution's normal election process within a period considered reasonable by the department of financial institutions;**

**the director of the department may appoint to the board of directors a person whom the director considers capable of providing competent leadership and decision making ability.**

**(e) A person appointed under subsection (d):**

- (1) may serve until the director of the department determines that the institution has filled the vacancy through the institution's normal election process; and**
- (2) may not serve on a board of directors for a period of more than two (2) years, unless elected through the institution's normal election process.**

SECTION 12. IC 28-13-16-4, AS AMENDED BY P.L.258-2003, SECTION 29, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE

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JULY 1, 2004]: Sec. 4. (a) A financial institution or any of its subsidiaries may acquire or establish a qualifying subsidiary by providing the department with written notice before acquiring or establishing the subsidiary. The department shall notify the requesting financial institution of the department's receipt of the notice.

(b) A subsidiary may exercise a power or engage in an activity permitted to be performed by a financial institution under the same conditions and restrictions as if the power or activity is performed by the financial institution itself, or the activity has been authorized ~~by~~ **as "activity eligible for notice" procedures under 12 CFR 5.34(e)(2)(ii): 5.34(e).**

(c) The qualified subsidiary may exercise or engage in the activity thirty (30) days after the date on which the department receives the notification unless otherwise notified by the department.

SECTION 13. IC 28-13-16-5, AS ADDED BY P.L.215-1999, SECTION 10, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 5. A financial institution may acquire or establish a nonqualifying subsidiary by submitting an application to the department containing:

- (1) a complete description of the financial institution's investment in the subsidiary;
- (2) the activity to be conducted; and
- (3) a representation that the activity:
  - (A) could be performed by a financial institution under statutory authority of this title;
  - (B) is a part of or incidental to the business of banking as determined by the director; or
  - (C) has been authorized ~~by~~ **as "activity eligible for notice" procedures under 12 CFR 5.34(e)(2)(ii): 5.34(e).**

The department shall notify the requesting financial institution of the department's receipt of the application.

SECTION 14. IC 28-15-2-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 2. (a) As used in this section, "rights and privileges" means the power:

- (1) to:
  - ~~(1)~~ (A) create;
  - ~~(2)~~ (B) deliver;
  - ~~(3)~~ (C) acquire; or
  - ~~(4)~~ (D) sell;
 a ~~product or service~~ **product, a service, or an investment** that is available to or offered by; or
- (2) to engage in other activities authorized for;



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federal savings associations **domiciled in Indiana.**

(b) Subject to this section, savings associations may exercise the rights and privileges that are granted to federal savings associations.

(c) A savings association that intends to exercise any rights and privileges that are:

- (1) granted to federal savings associations; but
- (2) not authorized for savings associations under:
  - (A) the Indiana Code (except for this section); or
  - (B) a rule adopted under IC 4-22-2;

shall submit a letter to the department, describing in detail the requested rights and privileges granted to federal savings associations that the savings association intends to exercise. If available, copies of relevant federal law, regulations, and interpretive letters must be attached to the letter.

(d) The department shall promptly notify the requesting savings association of its receipt of the letter submitted under subsection (c). Except as provided in subsection (f), the savings association may exercise the requested rights and privileges sixty (60) days after the date on which the department receives the letter unless otherwise notified by the department.

(e) The department, through its members, may prohibit the savings association from exercising the requested rights and privileges only if the members find that:

- (1) federal savings associations in Indiana do not possess the requested rights and privileges; or
- (2) the exercise of the requested rights and privileges by the savings association would adversely affect the safety and soundness of the savings association.

(f) The sixty (60) day period referred to in subsection (d) may be extended by the department based on a determination that the savings association letter raises issues requiring additional information or additional time for analysis. If the sixty (60) day period is extended under this subsection, the savings association may exercise the requested rights and privileges only if the savings association receives prior written approval from the department. However:

- (1) the members must:
  - (A) approve or deny the requested rights and privileges; or
  - (B) convene a hearing;
 not later than sixty (60) days after the department receives the savings association's letter; and
- (2) if a hearing is convened, the members must approve or deny the requested rights and privileges not later than sixty (60) days

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after the hearing is concluded.

(g) The exercise of rights and privileges by a savings association in compliance with and in the manner authorized by this section does not constitute a violation of any provision of the Indiana Code or rules adopted under IC 4-22-2.

(h) Whenever, in compliance with this section, a savings association exercises rights and privileges granted to national savings associations domiciled in Indiana, all savings associations may exercise the same rights and privileges if the department by order determines that the exercise of the rights and privileges by all savings associations would not adversely affect their safety and soundness.

SECTION 15. IC 32-17-9-6, AS ADDED BY P.L.2-2002, SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 6. As used in this chapter, "security account" means:

(1) a reinvestment account associated with a security, a securities account with a broker, a cash balance in a brokerage account, cash, interest, earnings, or dividends earned or declared on a security in an account, a reinvestment account, or a brokerage account, whether or not credited to the account before the owner's death; or

(2) **an investment management or custody account with a trust company or a trust department of a bank with trust powers, including the securities in the account, a cash balance in the account, cash, cash equivalents, interest, earnings, or dividends earned or declared on a security in the account, whether or not credited to the account before the owner's death; or**

(3) a cash balance or other property held for or due to the owner of a security as a replacement for or product of an account security, regardless of whether the cash was credited to the account before the owner's death.

SECTION 16. IC 32-29-1-2.5 IS ADDED TO THE INDIANA CODE AS A **NEW SECTION** TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: **Sec. 2.5. A mortgagee or a mortgagee's assignee or representative may not require a mortgagor, as a condition of receiving or maintaining a mortgage, to obtain hazard insurance coverage against risks to improvements on the mortgaged property in an amount exceeding the replacement value of the improvements.**

SECTION 17. **An emergency is declared for this act."**

Renumber all SECTIONS consecutively.

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and when so amended that said bill do pass.

(Reference is to SB 222 as printed January 21, 2004.)

BARDON, Chair

Committee Vote: yeas 14, nays 0.

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